

FINAL EXAMINATION: SCHOOL LAW

Instructions: Please use all notes and other materials as needed. You may have to do a little research into areas we did not have time to fully cover in class, but you have the resources at your fingertips. I have constructed this test in such a way so as to determine whether you are able to spot issues and find answers. I am not testing you to determine whether you have a deep understanding of any of these topics or the ability to write a long essay on any of them.

DO NOT work with any of your classmates on this test.

Your answers are due to me no later than midnight on December 11, 2008. You may email them directly to me (mduncan@feltmartinlaw.com) or you can turn them in at Rocky in the way that you have turned in your other work in your master's program.

1. Under what circumstances may a school disclose information to third parties (people other than the student or parent/guardian) from education records without consent? (2 points for each correct answer, 2 points for the correct citation to authority, maximum points 10)
2. What is directory information (4 points) and how does a school designate student records as "directory information" (4 points). (additional 2 points for the correct citation to authority)
3. Is the school required to keep a record of disclosure of student records, and if so, what should that record contain and where should it be kept? (3 points, plus 2 points extra credit for correct citation to authority)
4. Please describe the purpose of Section 504 of the Rehabilitation Act and the obligations it imposes upon the public schools. (5 points)
5. One of your special education students (emotionally disturbed under the IDEA) was referred to the principal's office because he had a switchblade in his pocket and had been telling kids at lunch that he had it and was not afraid to use it. Please make a step-by-step outline of the procedures you would follow and the discipline you would seek to impose. (15 points; extra credit will be awarded if you have citations to authority.)
6. Your school superintendent has resigned in the middle of the year because she figured out that it would be easier teaching at an inner-city school in Chicago than working with your school board. The board has appointed you as acting superintendent. You are thrilled because now you have the ability to terminate the popular long-time high school math teacher/football coach. Rumors are that he keeps a flask of whiskey in his locked desk drawer, gives the prettiest girls the highest grades (even when they haven't

turned in their homework), and spends 90% of his class time telling ribald stories from his years in Vietnam and explaining to the students why his strong faith in Jesus Christ kept him going then and provides all of the answers to life's questions. You just learned that he has been charged with a DUI for drunk-driving last Saturday night. Please make a step-by-step outline of the steps you will take to address these issues. (25 points)

7. (2 points) Your school counselor comes to you in tears, waving a subpoena requiring him to turn his files over to a lawyer (who is representing the father in a dissolution proceeding) and appear in court to testify in a hearing involving the parenting plan of 2 elementary students.

After passing him the box of tissues, you tell him (pick the best response):

A. Give the lawyer your entire original file, and wear a nice suit and tie when you go testify;

B. There is a 4 step process we need to follow:

(1) we must first determine whether your notes are considered confidential health care information under HIPAA and the UHCIA (ie. The counselor acted as a therapist and provided mental health related counseling);

(2) if the notes are health care info, the counselor must then determine whether there is a risk of danger or retaliation to any person if the notes are disclosed;

(3) if so, then we will seek the advice of a lawyer on how to comply with federal and state health care law and/or take steps to quash the subpoena;

(4) if there is no risk of retaliation or if the records are not health care records, then you can produce a copy of your complete file and can testify. Make sure other students' names or identifying information are removed, and do not use other students' names or information when testifying.

C. Ignore the subpoena because everything that occurs in the counseling setting is confidential and privileged and cannot be disclosed to anyone, including parents.

D. Organize your notes, rewrite the pages that do not make sense or which are hard to read, add information that you think will be helpful to the parent you like better, and make a copy of the revised version to give to the attorney.

8. (2 points) Your girl's basketball coach (a male) is forever in your office complaining about his team's awful practice schedule (well into the evening after the boy's finish), about how the boys get new uniforms every year from the parents' booster

club, and about how the pep rally for the boys' team is heads above better than the girls'. You've had enough, take him off the coaching roster, and reassign him to a different school.

Does this fellow have anything to stand on when he files his grievance and a companion suit in federal District Court – even though he wasn't personally subjected to the allegedly discriminatory behavior?

- A. Yes. He's a tenured teacher and can only be reassigned for good cause.
- B. No. A coaching contract is not a property right that gives rise to constitutional due process protections.
- C. Yes. The United States Supreme Court has held that Title IX implies a private right of action for retaliation by individuals who complain about gender discrimination suffered by others.
- D. No. Hell no. He's lucky he still has a job.

Extra credit: determine whether the collective bargaining agreement in your District gives authority to management to make unilateral transfer decisions and copy that paragraph into your test answer here. (2 points) Determine whether the collective bargaining agreement in your District speaks to stipend positions and if it does, copy that paragraph into your test answer here. (2 points) Identify the leading authority which supports the correct answer. (2 points)

9. (2 points) Your teaching staff has been unsuccessful in addressing the extreme behavioral problems of a 5th grader, and they believe that he may qualify for services under the IDEA as emotionally disturbed. However, after many attempts by every school administrator, teacher, paraprofessional, special education coordinator, counselor, and lunch aide, the parents refuse to consent to an initial evaluation.

Your best option is:

- A. Proceed with due process;
- B. Expel the student in accordance with state law;
- C. Place him in a special education classroom for emotionally disturbed children, create an IEP for him, and send a copy to the parents.

10. (2 points) A tenure teacher is not happy. Before school, during her prep period, and again after school, this teacher can be found picketing outside the high school

with signs and pre-recorded invective calling for recall of certain trustees and accusing trustees of fraud and misuse of funds. She also sends letters home with her students setting forth her view of the facts concerning budgeting problems and demanding that parents support her efforts to unseat the naughty board members.

You as the principal want to reprimand her and tell her that any further picketing during school hours or letters home will result in a recommendation for termination. Your superintendent's correct response is:

- A. The teacher is entitled to First Amendment protection, and any reprimand or other action taken against her violates her free speech rights.
- B. Teacher is entitled to exercise her right of free speech as a citizen to speak out on matters of public concern, but if she uses her position as a teacher to express her views, she is not necessarily insulated from discipline. The school district as an employer has a legitimate interest in efficiency, order, and a disruption-free educational environment.
- C. Together the superintendent and principal should draft the recall petition (to remove the trustees) and utilize the services of the teacher to obtain the necessary signatures.
- D. Tell the principal that she should focus on her efforts to meet AYP and quit picking on the poor teachers.

11. (10 points) You and your staff have been noticing an increase in the number of students in confrontations with each other and in the last month have stopped 13 fights during lunch. Skin-headed students wearing t-shirts bearing swastikas and slogans advocating extermination of people of color, Jews, Muslims, and Democrats are always at the center of these altercations. As a result, you have developed a new school rule banning the wearing of such t-shirts or otherwise communicating those ideas during school and setting forth a progressive discipline policy which would lead ultimately to expulsion. You sent a letter home to all families with a copy of the rule and your letter explaining why you were adopting this rule. Today you received a phone call from the Board Chair and the Superintendent indicating that they had been contacted by a lawyer for one of the skin-headed students threatening suit on First Amendment grounds.

In one to two paragraphs, set forth the *Tinker* standard and analyze whether your rule violates the skin-headed students' rights of free expression and any issues concerning the other students' constitutional rights.

12. (2 points) A local newspaper reporter is standing in front of your desk with a handful of dimes. He's working on a story on the kind of people teaching the kids in

your town. He heard through the grapevine that you investigated alleged sexual misconduct on campus by 2 teachers. He wants anything you have on that rumor, including any documents relating to your investigation. What do you do?

- A. Smile graciously and explain that personnel records are protected by the constitutional right of privacy and governed by your CBA and that nothing may be disclosed without first notifying the teachers involved and getting their consent to the release of the records.
- B. Stifle your outburst and send him away before saying anything that could be quoted in the paper.
- C. Smile, say “sorry” and wait patiently for a process server to bring the newspaper’s lawsuit against you and the district for failure to comply with the obligations imposed by the public’s constitutional “right to know”.
- D. Warm up the copier and provide him with the information generated in the investigation, being careful to redact any names of other individuals and any other confidential information unrelated to the focus of the investigation.

13. (extra credit: 2 points) Okay. Same reporter. Different story.

Now, the same reporter heard that one of your male teachers has a boyfriend in San Francisco. The reporter also heard that this teacher took approved and paid leave on the Wednesday before Thanksgiving and went to California. The reporter wants copies of all the teacher’s leave request forms. The recent form submitted by the teacher indicates that the teacher wants those days off “to spend quality time with my same sex soul mate in the city by the bay.” Now what do you do?

14. (2 points) Any employee of a school district may physically restrain a student in which circumstances:

- A. To maintain the orderly conduct of a student.
- B. To take possession of a dangerous object on the student.
- C. A and B, but only if the restraint is by a teacher or principal.
- D. A and B.

(Additional 2 points) Please provide the correct citation to Montana law. (Wyoming students: find the comparable Wyoming statute and the answer under Wyoming law.)

Should you take the following actions? Answer yes or no to each one:

F. Convince the Board of Trustees to add this teacher's extra-curricular activity to the list of paid stipend positions.



The plaintiffs are members of the regional symphony and other local musicians who claim that their extremely talented and clearly superior children are not being chosen as first chair in their sections because they do not attend the prayer group meetings.

After a long, angry, public, contentious, and expensive couple of years, with countless press conferences, intervention by the union on behalf of the atheist teachers, intervention by the ACLU and the George W. Bush Foundation for Fundamentalism in Education on behalf of public employees' right to freedom of religion, intervention by the local newspaper seeking all teachers' personnel records where each teacher's religious preference is noted (Yikes!), picketing by the students at every opportunity, and, of course, expert testimony assessing each student's musical skills to determine whether the correct individuals were properly placed in first chair, the Court finally decides: (Choose the one right answer)

- A. The students are allowed to peaceably assemble at any time that the school building is open and in accordance with all other school rules regarding student conduct, provided there is no disruption to the educational process, but the teacher is enjoined from leading or supervising the group.
- B. The group is allowed to continue, but no orchestra students under the supervision of this teacher are allowed to participate due to the adverse and discriminatory effect on the other students.
- C. Not only is it A-Okay for this scene to continue, but the regional symphony is enjoined from performing any secular music for the next 3 years.
- D. As long as school policies allow other outside groups access to the school, the District cannot limit access by religious groups. All conditions and costs of use as established in policy must be enforced equally, and the school cannot sponsor, use District funds, or provide any support to the group.

17. (2 points) Your high school students all look grungy, pierced, tattooed, and dyed. As if that weren't bad enough, they walk into school in a cloud of sweet-smelling smoke which lingers on their tattered, ill-fitting clothes. Grades are dropping, attendance is terrible, and the football and volleyball teams didn't win a game this fall. No one showed up for cross-country or soccer. There has been a raft of burglaries downtown and at the electronics store. Bikers who normally pass through in the summer decided to stay. You finally decide it's time for something (like a vacation or an application to the District down river?).

So, you call the sheriff and enter into a contract for the services of a drug-sniffing dog. You also send home a letter regarding the fact that Bowser is on his way. You

announce it every morning for a couple weeks (there are no longer any Student Council members to read the announcements, so this is just another duty “as assigned”).

The big day arrives, and you decide that for this first foray into Primetime Search & Seizure, you will just focus on the parking lot. Boy, it’s tempting to do the cars parked along the nearby street, but Marilee told you not to. Bingo. Bowser barks at the blue blazer, the car belonging to the Board Chair’s son. You call him from class, you ask him to open the vehicle, he squeals about wanting his mommy (but only for a second), he opens it, and you search. The sheriff and the dog go sit on the nearby grass to enjoy a donut. You find one bong (you suspect), a handgun, and a diary filled with threats to blow up the school. Choose the best answer:

- A. The search was illegal because a minor cannot consent to a search, the search occurred outside the school, and school officials do not have the legal authority to perform a search, especially vehicle searches.
- B. The search is illegal because Trustees’ family members are immune from liability for any actions, even criminal conduct.
- C. You recommend expulsion for the possession of the weapon, and the board conducts a due process hearing, with the Board Chair abstaining.
- D. After the vehicle search, it is legal for you to immediately search his backpack, coat, and locker (but the miscellaneous drugs, knives, and stolen iPods seem anticlimactic after the first big find.)
- E. You find all of his friends, and with their consent, search their vehicles, lockers, and backpacks. These searches are legal.

(Extra credit: explain your analysis of any of the answers you did not choose, 2 points for each.)

18. (Extra credit: 2 points) You are regretting the day you decided to become a principal. It’s modern technology that is killing you, and today was the last straw. At least 50 cell phones started ringing during your annual “Changes to the Student Handbook” speech.

True or False:

- A. The Board of Trustees can enact a cell phone use policy which states that no cell phones can be turned on during school hours. First violation: warning. Second violation: cell phone is put in the office until the end of the day. Third violation: lose it for the rest of the semester. The board conducts the usual three readings, provides public notices, takes public comment, and once it’s passed, it

goes in the Student Handbook (to be read aloud at the next assembly!) and in a letter home.

B. The consequence for the third violation as described in the policy above is an unconstitutional taking of private property without due process and violates a parent's fundamental right to maintain the family relationship and communicate with her remarkable and talented child.

19. (extra credit: 5 points) Your district charges tuition for any students to attend who do not reside in the district boundaries. On August 15, an elderly woman appears in your office with her 10 year old grandson and offers a long tale of woe concerning his ne'er-do-well parents (dad's last known location was in rehab in Nevada 3 years ago; mom ran off with the circus in May and has sent one postcard from Tallahassee with a glowing report of the fun she is having, but no return address).

Describe what grandmother is required to do to be able to enroll the child in your school without paying tuition. (hint: we did not have time to cover this in class, so look in the materials I posted for the class.)